F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	01/26/22		
SPONSOR	Ortez/Lujan	**LAST UPDATED**	02/02/22	**HB**	125
SHORT TITLE	Sustainable Building Tax Credit Dates			**SB**	
				ANALYST	Faubion

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24	FY25	FY26		
-	Up to ($7,150.0)	-	-	-	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	-	$80.0	$80.0	$160.0	Recurring	EMNRD – General Fund
	-	$60.0	-	$60.0	Nonrecurring	EMNRD – General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (NMAG)
Energy, Minerals, and Natural Resources Department (EMNRD)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 125 (HB125) amends the Income Tax Act and the Corporate Income and Franchise Tax Act in order to extend the eligibility for the 2021 Sustainable Building Tax Credits for the construction of new sustainable commercial and residential buildings from those completed on or after April 1, 2023 to those completed on or after January 1, 2022.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

HB125 moves the start of the eligibility period for the 2021 sustainable building tax credit (2021 SBTC) from April 1, 2023 to January 1, 2022, effectively expanding the 2021 SBTC program by one year and three months. The 2015 sustainable building tax credit (2015 SBTC) is available for the construction of a sustainable building that is completed prior to April 1, 2023. Between January 1, 2022 and April 1, 2023, both the 2015 and the 2021 credit will be available, but claimants can only claim one of the two, presumably whichever will maximize their credit amount.

The 2021 SBTC increased the annual credit cap from $5 million to $7.15 million. In a previous analysis of the 2021 SBTC, TRD states, "The 2020 New Mexico Tax Expenditure Report demonstrates that the $5 million current cap has nearly been met in recent years and it is anticipated that the cap will be met in FY22 and going forward due to the overall broadening of qualified expenses and projects." Additionally, the previous fiscal impact analysis of the 2021 SBTC delayed any negative fiscal impact to tax revenues until FY24 given the April 1, 2023 start to the eligibility period; therefore, moving the eligibility period up one fiscal year will move the fiscal impacts accordingly. Additionally, because both the 2015 and 2021 SBTC will be available for this overlap period, it is EMNRD and LFC's interpretation that both credit caps can be utilized simultaneously, resulting in a maximum fiscal impact of $7.15 million for this period. TRD's interpretation is that only the $7.15 million cap will be utilized, resulting in a fiscal impact of $2.15 million in FY23. See Technical Issues for further discussion.

In addition, the earlier effective date for the SBTC program will have fiscal impact for EMNRD, as the 2015 SBTC and 2021 SBTC programs will be active concurrently during 2022. EMNRD's Energy Conservation and Management Division will require additional staffing resources to revise rules, review applications, and develop an electronic submission process for the 2021 SBTC while simultaneously administering the 2015 SBTC. This includes an estimated annual cost for initiation and continued administration of the program of $80.0 for a new FTE position including benefits, and approximately $60.0 for program design, administrative, legal, and information technology staff.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

This bill creates or expands a tax expenditure with a cost that is difficult to determine but likely significant. LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

SIGNIFICANT ISSUES

EMNRD points out that the existing program has been extremely popular, and HB125 addresses the concerns from the building industry that a “funding gap" will occur between the projected end of monies for the 2015 Sustainable Building Tax Credit and the beginning of the 2021 Sustainable Building Tax Credit program, which is currently slated to begin April 1, 2023. EMNRD has received applications that are in a queue for certification up to 2023 under the 2015 SBTC and is currently processing the applications for the remainder of the SBTC funding through December 31, 2024.

TRD notes that while tax incentives may support particular industries or encourage specific social and economic behaviors, the proliferation of such incentives complicates the tax code. Adding more tax incentives: (1) creates special treatment and exceptions to the code, growing tax expenditures and/or narrowing the tax base, with a negative impact on the general fund; and, (2) increases the burden of compliance on both taxpayers and TRD. Adding complexity and exceptions to the tax code does not comport generally with the best tax policy.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill’s requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose. The requirement is imposed on both TRD and EMNRD.

ADMINISTRATIVE IMPLICATIONS

EMNRD and TRD will be required to transition to the 2021 SBTC much earlier than anticipated. As this bill will move the start of the eligibility period for the 2021 credit to a date already passed, it is unclear how EMNRD and TRD will process those credits already claimed or how quickly they will be able to transition to the new parameters. It is possible that the acceleration of the rollout could increase transition costs to both departments.

TRD will update forms, instructions, and associated publications. These updates will be incorporated into annual tax program revisions.

TECHNICAL ISSUES

The bill is unclear in in its intent of whether or not both the 2015 SBTC and 2021 SBTC caps will apply during the overlap period or if only the 2021 SBTC cap will apply. Interpretation varies among state agencies. The LFC recommends adding clarifying language regarding the implementation of the tax credits during the overlap period.

EMNRD points out that the 2021 SBTC statute contains a technical drafting error in Section 2.F, where the Solar Market Development Tax Credit is referenced. The reference is to the expired 2016 statute, Section 7-2-18.14 NMSA 1978, and should be to the new statute, Section 7-2-18.31 NMSA 1978. The sponsors of HB125 should take the opportunity to correct this error to avoid the double counting of tax credits.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate.

JF/acv/rl/acv